U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-G-G-

DATE: MAR. 9, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a neurologist specializing in epilepsy, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in the instant petition is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must corroborate that his or her past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise are insufficient to show eligibility for a national interest waiver. *Id.* at 220. At issue is whether a petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

II. ANALYSIS

Upon review of the entire record, the evidence the Petitioner submitted established that he is a member of the professions holding an advanced degree and that his work as a neurologist is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner's services will be national in scope and whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on September 16, 2014. Documentation supporting the Form I-140 included evidence regarding the Petitioner's credentials, professional memberships, awards, publications and presentations, and service as a peer reviewer in his field.[1] The Petitioner also submitted several reference letters attesting to his clinical expertise, teaching responsibilities, and the significance of his medical research.

Educational degrees, occupational experience, licenses, professional memberships, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (F), respectively. As the Petitioner qualifies for the classification sought as a member of the professions with an advanced degree, the issue of exceptional ability is moot. Pursuant to section 203(b)(2)(A) of the Act, foreign nationals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as a foreign national of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver based on a degree of expertise significantly above that ordinarily encountered in his field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. For the reasons discussed below, the record confirms that he is a talented physician and researcher who is well regarded by his colleagues and peers. The materials do not, however, establish that his work has resulted in significant benefits beyond his employer or set him apart from other competent and qualified neurologists. Without support that his results have affected the field as a whole, employment in a beneficial occupation does not, by itself, qualify the Petitioner for the national interest waiver.

On February 27, 2015, the Director issued a request for evidence (RFE). The Director acknowledged that the Petitioner has the "potential to be an influence on your field as a whole" but found that he did not establish "a past record of specific prior achievement that justifies projections of future benefit to the national interest." After reviewing the materials offered in response, the Director denied the petition on [redacted] 2015, finding that the Petitioner had not overcome the concerns discussed in the RFE. On appeal, the Petitioner submits a brief, an updated letter from [redacted] the Director of the [redacted] corroboration that two of the Petitioner's articles were each cited one time, two certificates from the [redacted] confirming the Petitioner's service as a Clinical Neurophysiology, EEG & Epilepsy Fellow, and an email indicating the acceptance of a manuscript for publication.

The record contains letters attesting to the importance of the Petitioner's work, and many of these letters generally state that he has influenced his field. According to [redacted] the Petitioner "has utilized his background in neurology, neurophysiology and epilepsy to conduct cutting-edge studies that have led to advances and improvements in his field." Similarly, [redacted]

[1] While we discuss only a sampling of the evidence, we have reviewed and considered all submitted materials.

Associate Professor of Neurology and Neurobiology, wrote that the Petitioner "has utilized his background in medicine to conduct cutting-edge studies that have led to advances in the field of neurology." Professor, Department of Orthopedic Surgery at the stated that the Petitioner "has produced innovative research that has advanced our understanding of epilepsy, stroke, and Parkinson's disease." and both mentioned that the Petitioner worked on a study that developed a seizure freedom score as a tool to predict postoperative freedom from seizures. They confirm that the tool can be useful with counseling about future seizure risk, but do not suggest that the tool is being used or considered for use outside of the Petitioner's institution. Ultimately, the letters did not provide any specific examples of how the Petitioner's work has already influenced the field. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Research Director, indicated that she uses "a new seizure freedom score scale" that she developed with the Petitioner. As stated by the Director, however, the "use by a co-author of this research does not" establish a "degree of influence on the field as a whole." Although the Petitioner maintained that it is also being used by "many physicians" at "different centers," he did not include documentary evidence, such as letters from other institutions who are using the scale, to support his assertions. *Id.* While the Petitioner did submit letters from independent institutions, those letters do not discuss any interest by those institutions in implementing the Petitioner's tool. a neurologist at the confirmed only that the Petitioner is "a promising young neurologist and scientist" and "has exceptional potential to be an outstanding clinical epilepsy physician." According to a posting on the "tool will help with patient and family counselling and estimation of surgical candidacy at both early and advanced stages of a surgical evaluation," but the item did not reveal implementation of the score by anyone beyond the team responsible for its development.

Several of the submitted letters affirmed the prominence of the journals in which the Petitioner has published articles and the conferences at which he has been invited to present his work. Selection of the Petitioner's work for presentation or publication shows that his research may be acknowledged as original and has been shared with others, but it does not establish that his findings have had an impact on the field. A journal's ranking and impact factor can provide an approximation of the prestige of the journal, but they do not demonstrate the influence of every article published in that journal. In this case, the Petitioner has not presented a record of citation or other substantiation that his findings have had a notable impact on his field. While particularly significant awards may serve as evidence of influence on his field, the Petitioner did not corroborate that his awards from the institution where he was working, a local society, and conferences funding his travel to present his abstracts are indicative of such influence.

A few of the letters also attested to the Petitioner's "rare" and "diverse" background. Assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See* § 212(a)(5)(A)(i) of the Act; *NYSDOT*, 22 I&N Dec. at 215, 221. Upon review, the supporting evidence has not corroborated specifically how the Petitioner's findings have impacted his field. Accordingly, we find the record insufficient to demonstrate that the Petitioner has had some degree of influence on the field as a whole.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the Petitioner's past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his or her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-G-G-*, ID# 15778 (AAO Mar. 9, 2016)